

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.17 OF 1999

The Commissioner of Income Tax, Kolhapur		Appellant
V/s		
M/s Arvind Trading Co.	...	Respondent
Akluj, Dist.Solapur		

Mr.A.S.Rao for appellant
None for respondent

CORAM: S. RADHAKRISHNAN
AND
J.H.BHATIA, JJ.
DATE : 5TH JULY, 2005.

P.C.

1. Heard the learned counsel for the Revenue.

None appears for the respondent though served.

2. The following substantial question of law
has been raised.

"Whether on the facts and in the circumstances
of the case, the Tribunal was justified in
holding that since the assessment was framed
under section 143(1) of the Income Tax Act,
the C.I.T. was not justified in invoking the
jurisdiction under section 263 of the Income
Tax Act, even if the Assessment was erroneous
and prejudicial to the interests of the
Revenue ?"

3. In the above matter, as far as respondent is
concerned, the assessment years involved are 1986-1987
and 1987-1988. It appears that assessment as far as
the respondent concerned was completed on 31.03.1989
under section 141 of the Income Tax Act accepting the

return of assessee.

4. The C.I.T. after examining income tax record of the respondent-assessee was of the view that order passed by the Assessment Officer Revenue as prejudicial to interest of Revenue within meaning of section 263 of the Income Tax Act and accordingly, notices were issued to the assessee. After hearing the assessee, C.I.T. come to the conclusion that C.I.T. could not have exercised its power under section 263 on the ground that assessment order was erroneous and prejudicial to the interest of the Revenue.

5. Revenue has preferred this appeal only on the above question of law. In the sense, whether C.I.T. could exercise its power under section 263 of the Income Tax Act whenever it has found that assessment order was erroneous and prejudicial to the interest of the Revenue.

6. The learned counsel appearing on behalf of appellant has brought to our notice a judgment of Bombay High Court in the case of **Commissioner of Income-tax v. Rajkumar Dipchand Phade** reported in **(2001)249 ITR 0520**. In the above judgment, very same

issue was raised as the above question of law and the Court has very clearly held that the Commissioner has to exercise its power under section 263 of the Income Tax Act whenever it has found that order of assessment to be erroneous or prejudicial to the interest of the Revenue.

7, Under the facts and circumstances, the aforesaid question is answered in negative. Appeal in favour of the Revenue and against the Assessee.

S.RADHAKRISHNAN, J.

J.H.BHATIA, J.